

DONALD RAY GREEN #622869 §
v. § CIVIL ACTION NO. 6:10cv532
HENDERSON COUNTY JAIL, ET AL. §

The Plaintiff Donald Green, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Green complained of an incident which occurred in the Henderson County Jail in January of 2007, when he says that he was denied proper medical care. After he filed this lawsuit, the Court ordered Green to explain why his lawsuit should not be barred by the statute of limitations, given that he had signed his complaint in October of 2007, over three and a half years after the incident took place. Green replied that he had written the Court in January of 2009 and received a lawsuit form to assist him in filing suit, but he says that he is illiterate and did not understand the form, or how to go about filing his claim.

After review of the pleadings, the Magistrate Judge issued a Report on January 6, 2011, recommending that the lawsuit be dismissed based on the expiration of the statute of limitations. The Magistrate Judge observed that Green clearly knew of the incidents at the time that they occurred, and that ignorance and illiteracy are not grounds for tolling the limitations period.

Furthermore, the Magistrate Judge stated that the letter which Green wrote to the Court in January of 2009 did not serve to toll the limitations period.

Green filed objections to the Magistrate Judge's Report on January 20, 2011. These objections state that Green has an IQ of 60 and refer to Green's letter of January 2009 as a "right to sue letter" and says that the U.S. District Clerk accepted this letter and sent Green a standard Section 1983 lawsuit form with the two-year limitations period. Green also argues that the "right to sue letter" tolled the limitations period, thus allowing Green to bring his lawsuit in a timely manner.

The filing of a "notice of intent to sue" does not toll the statute of limitations in Section 1983 cases. Barile v. City of Hartford, 386 F.Supp. 53, 54 (D.Conn. 2005). Instead, as the Fifth Circuit has explained, a complaint by an incarcerated person is filed when it is delivered to prison officials for mailing. Cooper v. Brookshire, 70 F.3d 377, 378 (5th Cir. 1995). In this case, Green's initial letter of January of 2009 was not a complaint, and thus did not toll the statute of limitations. The Clerk of the Court sent Green a standard Section 1983 lawsuit form for his use in filing a complaint, but no complaint was ever filed. Thus, the limitations period elapsed on Green's claims, and his lawsuit is barred. As the Magistrate Judge stated, Green's lack of knowledge does not excuse the limitations bar. Green's objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Plaintiff's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and for failure to state a claim upon which relief may be granted, in that the statute of limitations has expired. It is further

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED. Finally, it is

ORDERED that a copy of this Memorandum Opinion and Final Judgment shall be sent by the Clerk to the Administrator of the Three Strikes List for the Eastern District of Texas.

So ORDERED and SIGNED this 1st day of February, 2011.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE